

**TITLE 14. Fish and Game Commission
Notice of Proposed Changes in Regulations**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 1050, 5510, 8550, 8553 and 8555, of the Fish and Game Code, and to implement, interpret or make specific Sections 8043, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and 8559, of said Code, proposes to amend Sections 163 and 164, Title 14, California Code of Regulations, relating to Harvest of Herring and Harvesting of Herring Eggs.

Informative Digest/Policy Statement Overview

Harvest of Herring, Section 163

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2004-05 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. The Department of Fish and Game (Department) is proposing a fishing quota of 3,440 tons (10 percent of the 2003-04 estimated spawning biomass) for San Francisco Bay. An initial 400-ton fishing quota (3.3 percent of the 2003-04 estimated spawning biomass of 12,124 tons) is proposed for Tomales Bay with provisions to increase the quota in-season if escapement goals are achieved by February 15, 2004. This season, the recommendation for an in-season increase is as follows:

- If the spawning escapement in Tomales Bay is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2004-05 season only, shall be no less than 2 inches or greater than 2 ½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000-01, 2001-02 and 2002-03, 2003-04 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on the size and age composition of herring caught in 2 inch mesh gill nets.

Other changes relating to the herring season dates and corrections to referenced subsections are recommended to coincide with changes in the annual calendar and for accuracy.

The following is a summary of those proposed changes in Section 163, Title 14, CCR:

- Set the dates of the roe herring fisheries in San Francisco Bay from 5 p.m. on Sunday, December 5, 2004 to noon on Thursday, December 23, 2004 ("DH" gill net platoon only), and from 5:00 p.m. on Sunday, January 2, 2005 to noon on Friday, March 11, 2005.
- Set the dates of the roe herring fisheries in Tomales Bay from 5:00 p.m. on Sunday, December 26, 2004 until noon on Friday, December 31, 2004, and from 5:00 p.m. on Sunday, January 2, 2005 to noon on Friday, February 25, 2005.

A correction to references to subsection (g)(4)(B) in subsection (h) is proposed for accuracy. The correct reference is subsection (g)(4)(A).

Harvesting Herring Eggs on Kelp, Section 164

Under existing law, herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable, nontransferable permit, subject to such regulations as the Fish and Game Commission shall

prescribe. Current regulations specify permit limitations; season; fishing area; permittee categories and qualifications; permit conditions; royalty fees; permit application procedures; permit performance deposit requirements; gear, fishing and harvesting restrictions; fishing quotas; landing and processing requirements; and permit suspension conditions and procedures. In addition, current regulations limit the number of permits that can be issued.

The proposed regulatory changes will establish fishing quotas for the 2004-05 HEOK fishing season. Individual HEOK quotas will depend on the total herring fishery quota for San Francisco Bay established by the Fish and Game Commission under Section 163, Title 14, CCR. The proposed quota for the 2004-05 San Francisco Bay herring fishery is 3,440 tons, representing 10 percent of the 34,400 ton estimated spawning biomass. If the Commission were to adopt a quota within this range, this would result in a 6.0-ton individual quota for a "CH" gill net permittee and a 1.7-ton individual quota for a non-"CH" gill net permittee participating in the HEOK fishery.

Subsection (f)(1) of the existing regulations specifies that one of the requirements of a prior permittee is the suspension of kelp for herring eggs on kelp fishing during the immediately preceding herring eggs on kelp season. The proposed regulatory language would remove this requirement and amend the section as follows:

- (1) Prior permittee. Permits shall be issued to all prior permittees. A prior permittee is defined as a person who has:
 - (A) met the requirements under subsection (g) of these regulations, and
 - (B) renewed their herring eggs on kelp permit for the immediately preceding herring eggs on kelp season, and
 - (C) submitted all fees from prior seasons.

Subsection (j) defines a line used in HEOK fishing. In an effort to facilitate enforcement and provide for safe navigation in the areas around herring eggs on kelp fishing, the proposed regulation will further define a line as follows:

- Kelp lines shall have floats or cork over the entire length of the line.

Subsections (k)(5) and (k)(9) reference processing operations. The proposed regulatory change would change the language to refer to brining, for consistency with existing language.

Subsection (i) contains language specific to the 2003-04 season only. The proposed amendment would remove this language as it is no longer relevant.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at Mono Memorial Hall, 100 Sinclair Street, Bridgeport, California on Friday, August 6, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Veterans Memorial Building, 209 Surf Street, Morro Bay, California on August 27, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 22, 2004, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August 27, 2004 at the hearing in Morro Bay, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Jon D. Snellstrom at the preceding address or phone number. Becky Ota, Department of Fish and Game, phone (650) 631-

6789, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing June 18, 2004. Oral or written comments relevant to these documents will be received at the August 6, 2004, meeting in Bridgeport. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., August 6, 2004. Draft environmental documents are available for review at the Commission office and at the Department of Fish and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Chino and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON August 6, 2004.**

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Section 163:

No adverse economic impacts. The proposed action for the 2004-05 season will have no adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations could benefit approximately 430 commercial herring fishermen and two processing plants in California, all of which are small businesses as defined under Government Code Section 11342.610. The direct impacts arising from the 2004-05 proposed interim management measures would result in an increase in the San Francisco Bay herring fishery quota, and a herring quota in excess of 2003-04 landings in Tomales Bay. (The San Francisco fishery quota was reduced to 2200 tons in 2003-04 due to concerns regarding the age structure of the population.) By increasing the San Francisco quota to 3440 tons, we would project potential 2004-05 ex-vessel revenue increases of as much as \$4,960,000 in the San Francisco fishery alone, for the 389 San Francisco herring fishermen. This is based on historical price data for years when herring roe commanded prices as high as \$2.00 a pound (1240 tons x 2000 lbs/ton x \$2/lb = \$4,960,000). Additionally, a 400 ton quota is proposed for the Tomales Bay herring fishery for 2004-05. This Tomales Bay quota is down from the 500 ton quota allowed for the 2003-04 season, though fishermen only harvested 300 tons of the available 500 ton quota in 2003-04. Thus the Tomales Bay herring fishery quota for 2004-05 represents a potential revenue increase of as much as \$400,000 for the 34 fishermen in that fishery (100 tons x 2000 lbs/ton x

\$2/lb = \$400,000). The 2004-05 Humboldt Bay and Crescent City Harbor herring fishery quotas remain the same as for the 2003-04; Humboldt 60 tons and Crescent City 30 tons, for 4 and 3 fishermen respectively. On average, the proposed regulations represent potential individual revenue increases of approximately \$9,674 for each herring fishermen Statewide.

Total ex-vessel revenue projections Statewide for the 2004-05 herring season could be as high as \$15,720,000 (3930 tons x 2000 lbs/ton x \$2/lb = \$15,720,000).

Section 164:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed changes are to improve clarity of the regulations, ensure compliance, and promote an efficient, orderly fishery.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None

- (f) Programs mandated on Local Agencies or School Districts:

None

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None

- (h) Effect on Housing Costs:

None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: June 15, 2004

Robert R. Treanor
Executive Director